

Appl'n. No. 09/752,557
Response dated November 5, 2005
Reply to Office Action of July, 5, 2005

REMARKS/ARGUMENTS

1. Status of Claims

- Claims 1-18, 26, 27, and 31 remain in this application.
- Claims 19-25, 28-30 are cancelled.

2. Restriction

The Examiner imposed a restriction requirement. Under this requirement, Applicants have been directed to restrict the present application to one of three inventions identified by the Examiner under 35 U.S.C. 121. Applicants elect Invention I consisting of Claims 1-18, 26, 27, and 31, drawn to a device having a sensor and a computer system. Accordingly, Applicants have cancelled claims 19-25, and 28-30.

3. Election of Species

The Examiner is requiring the selection of a distinct species of the invention for examination from one of the following species: Species I embodied in Fig. 1; Species II embodied in Fig. 4; Species III embodied in Fig. 5; and Species IV embodied in Fig. 6. Additionally, the Examiner has asked the Applicant to identify which claims read on each of these figures. Applicant traverses this requirement on the remaining claims on the grounds that the cited species are not patently distinct.

Each of the figures merely show embodiments of the invention used on different parts of a body and are not different species. The elected claimed

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invention is a surgical registration and positioning device. The main difference between the figures is that they show the claimed invention applied to different parts of a body. Namely, Figures 1, 4, 5, and 6 show curvature sensor element(s) attached to different parts of a body (such as a human body) where surgery or therapeutic intervention is to take place. However, these illustrative variations (i.e. where the device is attached to a body) are not claimed in any of the remaining claims and therefore are not relevant. In fact, all of the elements of independent claim 1 as well as dependent claims 2, and 9-11 are represented in all four of these figures and their immediately associated text. This is shown in Figures 1, 3, 4, & 6, and paragraphs 49, 51, 52, and 54 of the published form of this application (US 2002/0087101 A1, hereafter referred to as "Published Application."). Specifically, Figure 1 shows a curvature sensor embodiment positioned on a human head. Figure 4 shows is a curvature sensor mesh embodiment positioned on a head. Figure 5 show a curvature sensor mesh embodiment positioned on a pelvic region. Figure 6 shows a curvature sensor positioned on a thigh.

Applicant believes that: Figure 1 and its associated text provide support for Claims 1-2, and 9-11; Figures 4, 5, and 6 and their associated text provide support for Claims 1-18 and 31. Claims 26 and 27, which add the unillustrated limitation of a communications device, that find support in paragraphs 23, 24, 83, and 84 of the Published Application.

Therefore, for at least the reasons just articulated, withdrawal of this requirement is respectfully requested.

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4. Conclusion

For all of the reasons advanced above, Applicants respectfully submit that the application is in condition for allowance and that action is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner encouraged to call Applicants' agents at the telephone number shown below.

The Commissioner is hereby authorized to charge any additional fees, which may be required, or credit any overpayment, to Deposit Account No. 50-3212.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for an extension for time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-3212.

Respectfully submitted,



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Date: November 5, 2005

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